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## REMARKS

In the present Office Action, the Examiner provisionally rejected claims 1-36 under the judicially created doctrine of obviousness-type double patenting in view of claims 1-27 of co-pending Application No. 10/698,769. Accordingly, Applicants have filed the enclosed Terminal Disclaimer to address the provisional double patenting rejection of claims 1-36 and therefore request withdrawal of this rejection upon acceptance of this disclaimer.

Applicants amended claims 20 through 36 and respective references thereto by renumbering the claims to match the range of claims 21 through 37 respectively. These amendments were made to address these informalities and not to overcome any substantive rejections over cited art. No new matter has been added as a result.

Further, claims 1 and 21 were rejected under 35 U.S.C § 102(b) as being anticipated by Rottoo (U.S. Patent 5,933,417).

However, Applicants respectfully submit that the Examiner has failed to establish the prima facie case as each and every element of independent claims 1 and 21 are not taught by Rottoo. See Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2D (BNA) 1913, 1920 (Fed. Cir.), cert. denied, 493 U.S. 853, 107 L. Ed. 2d 112, 110 S. Ct. 154 (1989) (explaining that an invention is anticipated if every element of the claimed invention, including all claim limitations, is shown in a single prior art reference). See Jamesbury Corp. v. Litton

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Industrial Products, Inc., 756 F.2d 1556, 1560, 225 USPQ 253, 256 (Fed. Cir. 1985) (explaining

that the identical invention must be shown in as complete detail as is contained in the patent

claim). See Verdegaal Bros., Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 U.S.P.Q.2D (BNA)

1051, 1053 (Fed. Cir. 1987) (explaining that a prior art reference anticipates a claim only if the

reference discloses, either expressly or inherently, every limitation of the claim). See Kloster

Speedsteel AB v. Crucible, Inc., 793 F.2d 1565, 1571, 230 U.S.P.Q. (BNA) 81, 84 (Fed. Cir.

1986) ("Absence from the reference of any claimed element negates anticipation.")

Rottoo concerns a reservation system that reserves users access to different

communication ports on one or more multipoint multimedia servers or MMSs at a future

predetermined time interval. (Abstract, Col. 2, lines 6-19) The MMS is a specialized

telecommunication devices that switches video from one input port to an output port and vice-

versa to allow sharing of different multimedia equipment. (Col. 7, lines 30-49; Col. 4, lines 21-

29) Essentially, the MMS is a dedicated switching device that delivers video or audio from a

multimedia device to a display or audio output device. A typical MMS may have 32 such ports

that provide multimedia switching capabilities for different types of media including VCRs. (*Id.*)

Users request use of a VCR or other multimedia device along with ports on the MMS

switch in advance by way of a reservation stored in a resource availability matrix or database.

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(Abstract). The system handling the reservations is a separate entity identified in Rottoo as a "reservation controller". (Col. 4, lines 6-10) The user's request indicates to the reservation controller if a multimedia resource or port on the MMS is required or flexible (i.e., optional) and also specifies several preferred time slots for using the resources. (Col. 5, lines 15-22; Col. 7, lines 29-49). Based on the request, the reservation controller checks the resource availability matrix or database to determine if the multimedia resources or ports on the MMS deemed required and/or flexible are available in one or more time slots matching the request. (Col. 7, lines 50-52; Col. 8, lines 54-57; Col. 10, lines 60-65). Eventually, the reservation controller presents a response listing time periods to the user or persons that made the request including the requested resources or, in some cases, more resources than requested. (Col. 14, lines 3-10)

However, it is up to the user to make a decision once the response is created. If the user chooses to book a reservation then the reservation controller updates the resource availability matrix or database to indicate the ports on the MMS and requested multimedia devices are unavailable at the time slot in the future. (Col. 14, lines 48-59). Alternatively, the user may choose not to book a reservation if they do not like the time slots offering the ports on the MMS and requested multimedia devices. (*Id.*) In the former situation, it is also up to the user or users

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to login and use the reserved ports on the MMS and multimedia devices at the specified time period. (Col. 2, lines 25-28).

Applicants respectfully submit that Rottoo does not teach or suggest, "A method of governing access to resources in a computing utility facility" and "receiving a demand profile associated with an application that specifies a pattern of resources from a pool of resources to be delivered with a class of service" as recited in claim 1. Rottoo only concerns multimedia devices capable of playing video and a video switching device but not "a computing utility facility". Further, Rottoo receives a request from a user and not an application requiring a resource to be delivered with a class of service. There are not different classes of service to be provided in Rottoo only required and optional resources. If optional resources in Rottoo are not available then nothing is delivered with respect to optional resources and if the required resources are not available then nothing is delivered whatsoever. In contrast, claim 1 at least specifies that a particular resource can be delivered with different classes of service and not a single class of service, a single indication of being required or a single indication of being optional; this distinguishable classification scheme provides a flexible mechanism for requesting resources not contemplated either expressly or impliedly in Rottoo.

Consequently, Rottoo also does not teach or suggest "reducing the specified class of service to a lower class of service acceptable to the application if the determination indicates the

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resource pool is unable to deliver the resources at the specified class of service" as recited in

claim 1. For example, a request in Rottoo may receive a request for a port on the MMS that is

required (such as a local port) or optional/flexible (such as remote ports to the MMS). (Col. 7,

lines 29-49). If Rottoo discovers that the required resources like a local port are not available

then the complete request is rejected and processing stops; there is no class of service specified

and nothing in Rottoo allows the port to be changed from required to flexible or vice-versa. (*Id.*).

Even if required resources and flexible resources were viewed as classes, there nothing in Rottoo

that allows the reservation controller to "lower" or convert the required resources into flexible or

optional resources. In Rottoo the required resources and flexible resources are not higher or

lower than each other and cannot be converted.

This aforementioned interpretation is consistent with other aspects of Rottoo as well. For

example, Rotto contemplates that some responses to a user request for resources may

nonetheless not be acceptable to the user. Rottoo may provide a response to a request that the

user ultimately deems unacceptable and thus rejects. (Col. 14, lines 50-59). Clearly, this leads to

a lot of inefficiencies as Rottoo may attempt to allocate resources that the user rejects.

Nonetheless, this is not "reducing the specified class of service to a lower class of service

acceptable to the application" as specified in claim 1 since users in Rottoo may not find the

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responses acceptable. For at least this additional reason, Rottoo does not teach or suggest claim 1.

Finally, Rottoo does not operate by "admitting an application to the computing utility facility if resources delivered at the reduced class of service are available from the pool of resources and acceptable to the application" as recited in claim 1. First, there is no reduction in the class of service in Rottoo. Second, Rottoo only reserves multimedia and ports for users and then allows the users to access the multimedia devices and ports on the MMS at predetermined time slots in the future.

Applicant respectfully submits if Examiner believes that Rottoo teaches each and every element of claim 1 that these limitations are pointed out with particularity. Otherwise, Applicant would respectfully request that the Examiner withdraw the rejection of claim 1 for failing the "all elements rule" required by 35 U.S.C § 102(b) and the MPEP.

Independent claim 21 as amended is also not anticipated by Rottoo for at least the aforementioned reasons and should also be allowed. Further, dependant claims 2-20 and 22- 37 are not only allowable on their own but also allowable by virtue of their dependency on allowable independent claims 1 and 21 respectively.

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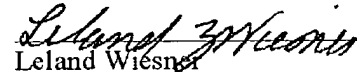
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In summary, claims 1-37 remain in condition for allowance in light of Rottoo. Applicant respectfully requests reconsideration of the rejections presented and their withdrawal in view of their remarks provided hereinabove.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Leland Wiesner, Applicants' Attorney at (650) 853-1113 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

_____12/9/2007_____
Date

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